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October 25, 2010

The Honorable Joan N. Ericksen
Judge, United States District Court
United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

RE: United States v. Lombard, 10-93-002 (JNE)

Dear Judge Ericksen,

Late last week, Government's argued for the first time that Mr. Lombard's Wisconsin fleeing convictions, set out in PSR paras. 53 and 56, were also crimes of violence. Thus whatever this Court's interpretation of the already contested escape conviction, PSR para. 61, the Government contends, Mr. Lombard remains a career offender. We disagree.

The Wisconsin statute to which Mr. Lombard pleaded guilty, Wisc. Stat. 346.04, references not only willful and wanton disregard "so as to interfere with or endanger" the officer, but also that a defendant may be convicted for a mere "increase [in] speed of the operator's vehicle." Such an increase need not endanger anyone, of course. In light of the statute's optional language, a categorical determination of violence is not possible to make. United States v. Furqueron, 605 F.3d 612, 614-615 (8th Cir. 2010).

There is a split in the Circuits as to whether Mr. Lombard's kind of fleeing (featuring abject speed) is necessarily a crime of violence. The Seventh, among others, holds that it is. United States Dismuke, 593 F.3d 582, 588-92 (7th Cir. 2010). But the Eighth Circuit differs. United States v. Tyler, 580 F.3d 722 (8th Cir. 2009) remains good law. See United States v. Johnson, 601 F.3d 869, 873 (8th Cir. 2010). Our Circuit is joined by Eleventh. United States v. Harrison, 558 F.3d 1280, 1291-1298(11th Cir. 2009)(interpreting a Florida fleeing statute with nearly

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the same language as Wisconsin's to be a non-violent felony).

The case law may be in flux, but it still favors Mr. Lombard. For these reasons, we continue to oppose the Government's position vis-a-vis the career offender designation.

Sincerely yours,

/s/ Paul Engh

Paul Engh

PE/cm

cc: Andrew Dunne

Derek Lombard

Steve Smith

DeeDee Thaisen